

other unforeseeable contingency beyond the control of the Contractor which would cause an abnormal delay in the project completion.

- (2) A specified or prequalified item is found to be unusable due to change or other circumstances.
- (3) If the Contractor is willing to provide a more recently developed or manufactured item of material or equipment of the same manufacturer which the Director determines to be equal or better than the one specified or prequalified.

A substitution request, regardless of reason, shall be fully explained in writing, by the Contractor and shall include his justification for said request, the quantities and unit prices involved, quotations and such other documents as are deemed necessary to support the request. Substitutions allowed pursuant to this provision, with the exception of the circumstance described under (B)3, do not qualify as value engineering. Any savings in cost will accrue to the State except where value engineering applies, and any additional cost for the substituted items will be paid for by the Contractor.

The above shall not be construed to mean that substitution for brand name specified materials and equipment will be allowed; the Director reserves the right to deny any request he deems irregular or not in the best interest of the State.

The burden of proof as to the comparative quality and suitability of alternate equipment, articles or materials shall be upon the Contractor and he shall furnish, at his own expense, all information necessary or related thereto as is required by the Director. The Director shall be the sole judge of the comparative quality and suitability of alternates and his decision is final.

The above provisions shall not be construed as permitting the use of alternates for equipment, articles or materials which are not designated under a trade name or the name of a manufacturer and his information catalogue and for which specifications are set forth.

6.12 AMERICAN PRODUCTS PREFERENCE—Preference shall be given to American products, materials and supplies in accordance with Section 103-24, H.R.S.

6.13 PREFERENCE FOR HAWAII PRODUCTS—In case Hawaii products, as defined in Section 103-41, H.R.S., are available and meet minimum specifications, the Director will describe, in the specifications for the work to be performed, the products listed in the Hawaii products list established pursuant to Section 103-42, H.R.S., which may be used in the work to be performed. Any bidder utilizing Hawaii products may claim the preferences stated in Section 103-43, H.R.S., provided that such bidder designates in his bid the Hawaii products and the classes hereof and provided also that such products are qualified and registered with the Hawaii products list. For the purpose of determining the lowest bid price only, the provisions of Section 103-43, H.R.S., shall also apply. Any contract awarded or executed in violation of said Section 103-43 shall be void and no payment shall be made on account of such contract.

This Section shall not apply to contracts when its application will disqualify the State from receiving federal funds or aid.

ARTICLE VII—LEGAL RELATIONS AND RESPONSIBILITY TO

PUBLIC

7.1 LAWS TO BE OBSERVED—The Contractor shall at all times observe and comply with all Federal, State, County and City laws, ordinances, rules and regulations which in any

manner affect those engaged or employed in the work, the materials used in the work, and the conduct of the work. The Contractor shall also comply with all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the work. Any reference to such laws, ordinances, rules and regulations shall include any amendments thereto.

The Contractor shall protect and indemnify the State and all its officers, agents and employees against any claim or liability arising from or based on the violation of any such laws, ordinances, rules and regulations, orders or decrees, whether such violation is committed by the Contractor or his subcontractor or the employee of either or both. If any discrepancy or inconsistency is discovered in the contract for the work in relation to any such laws, ordinances, rules and regulations, orders or decrees, the Contractor shall forthwith report the same to the Director in writing.

Attention is directed to Hawaii Employment Relations Act, Chapter 377, H.R.S.; Hawaii Employment Security Law, Chapter 383, H.R.S.; Wage and Hour Law, Chapter 387, H.R.S.; Payment of Wages and Other Compensation, Chapter 388, H.R.S.; Industrial Safety, Chapter 376, H.R.S.; and Workmen's Compensation Law, Chapter 386, H.R.S.

7.2 WAGES AND HOURS REQUIREMENTS—The Contractor shall at all times observe and comply with all provisions of Chapter 104, H.R.S., relating to wages and hours of employees on public works, which require, in part, the following:

- A. **HOURS OF LABOR**—No laborer or mechanic employed on the jobsite shall be permitted or required to work in excess of eight (8) hours in any one day or in excess of forty (40) hours in any one week or on Saturdays, Sundays or legal holidays of the State unless he receives compensation for all hours worked in excess of such daily hours or in excess of such weekly hours or on Saturdays, Sundays and legal holidays of the State at a rate of not less than one and one-half times his basic hourly rate of pay.

Such overtime compensation shall be computed on a daily basis or on a weekly basis, whichever method of computation yields the greater amount of overtime compensation. In no event shall these provisions be deemed to require payment of both daily and weekly overtime compensation on account of the same hours worked.

Written consent from the Director shall be obtained for work in excess of the normal eight (8) working hours per day or at nights or on Saturdays, Sundays or legal holidays. In cases of emergency, verbal consent will be sufficient.

Should permission to work overtime or at nights or on any holiday be granted by the Director, or if work requiring overtime compensation for State employees is necessary as a result of the Contractor's scheduled operations, whether this work occurs on or away from the project site, the Contractor shall reimburse the State the cost incurred. The Director will notify the Contractor of the minimum number of State employees required prior to the start of any such work. The costs chargeable to the Contractor shall include the following:

- (1) Overtime compensation at one and one-half (1½) times the basic salary of each employee required to work overtime because of the Contractor's scheduled operations.
- (2) The State's share of the cost of employees' retirement, medical plan, social security, vacation, sick leave, workmen's compensation funds, and other applicable fringe benefits and overhead expenses.
- (3) The transportation cost incurred by the employees in connection with the overtime work.
- (4) A charge for the use of state-owned vehicles and equipment at rates based

on established rental rates in use by the Department for the particular equipment or vehicle.

The monies due the State for personnel services and for the use of vehicles and equipment as determined hereinabove shall be deducted from the monies due or to become due the Contractor. In any event the Contractor shall not pay State employees directly.

Any hours worked in excess of the normal eight (8) working hours per day or at nights or on Saturdays, Sundays or legal holidays are not chargeable toward a working day.

The State may cancel the overtime, night, Saturday, Sunday or legal holiday work when, in the opinion of the Director, there is no necessity for such work or when such work is detrimental to the progress of the work.

- B. RATE OF WAGES**—The minimum wages to be paid to the various classes of laborers and mechanics engaged in the performance of such work shall be not less than the wages which the State Director of Labor and Industrial Relations has determined to be the prevailing wages for corresponding classes of laborers and mechanics on projects of similar character in the State. Such prevailing wages shall not be less than the wages payable under federal law to corresponding classes of laborers and mechanics employed on State public works which are prosecuted under contract or agreement with the federal government.

The current wage rate schedule established by the State Department of Labor and Industrial Relations prior to the advertised date of bid opening and made a part of the specifications shall be applicable, except those changes received by the Director from said Department less than five (5) calendar days before the bid opening date. Any changes received prior to five (5) calendar days before the bid opening date shall be transmitted to prospective bidders in the form of an addendum, and the Director may, because of the addendum, postpone the opening of the bids in the best interest of the public.

The Contractor shall post in a prominent and easily accessible place at the project site the schedule of prevailing rates of minimum wages applicable to the work, and he shall give to each laborer and mechanic employed to perform services required under the contract at the time of his assignment to the project, a copy of such rates of wages required to be posted; provided, however, that where there is a collective bargaining agreement, the Contractor does not have to provide his employees the wage rate schedule.

- C. UNCONDITIONAL PAYMENT OF WAGES CONCEDED TO BE DUE**—The Contractor or his subcontractor shall pay all mechanics and laborers employed on the project site, unconditionally and not less often than once a week, and without deductions or rebate on any account except as allowed by law, the full amounts of their wages including overtime, accrued to not more than five (5) working days prior to the time of payment, at wage rates not less than those stated in the contract and specifications, regardless of any contractual relationship which may be alleged to exist between the Contractor or subcontractor and such laborers and mechanics.
- D. WITHHOLDING OF WAGES**—The State may withhold from payments due or to become due the Contractor such amounts as it may consider necessary to pay laborers and mechanics employed by the Contractor or any subcontractor on the project site the difference between the wages required by the contract and specifications and the wages paid to such laborers and mechanics, less deductions and rebates allowed by law.
- E. PAYROLLS AND PAYROLL RECORDS**—Certified copies of each weekly payroll

shall be submitted to the State within seven (7) calendar days after the regular payment date of the payroll period. The Contractor shall be responsible for the submission of certified copies of the payrolls of all subcontractors. The certification shall affirm that the payrolls are correct and complete, that the wage rates contained therein are not less than the applicable wage rates contained in the wage rate schedule of these specifications, and that the classifications set forth for each laborer or mechanic conform with the work he performed.

Payroll records for all laborers and mechanics working at the project site shall be maintained by the Contractor and his subcontractors, if any, during the course of the work and preserved for a period of three years thereafter. Such records shall contain the name, address and social security number of each employee; his correct classification; rate of pay, fringe benefits including, but not limited to, health and welfare benefits, vacation and pension benefits, whether paid directly or indirectly to the laborer or mechanic; daily and weekly number of hours worked; deductions made and actual wages paid. Such records shall be made available for inspection by the State and by any of its representatives who may also interview employees on the project site during working hours.

F. FAILURE TO PAY REQUIRED WAGES—If the State finds that any laborer or mechanic employed on the project site by the Contractor or any subcontractor has been or is being paid wages at a rate less than the required rate by the contract and specifications, or has not received his full overtime compensation, the State may, by written notice to the Contractor, terminate his right, or the right of any subcontractor, to proceed with the work or with the part of the work in which the required wages or overtime compensation have not been paid and may complete such work or part by contract or otherwise, and the Contractor and his sureties shall be liable to the State for any excess costs occasioned thereby.

7.3 WORKMEN'S COMPENSATION ACT—From the beginning of the work until its final acceptance, the Contractor shall insure all workmen directly or indirectly employed by him under the contract from personal injury by accident.

7.4 CITIZEN LABOR—No person shall be employed as a laborer or mechanic unless such person is a citizen of the United States or eligible to become one; provided that persons without such qualifications may be employed with the approval of the Governor until persons who are citizens and are competent for such services are available for hire.

7.5 LABOR DISCRIMINATION—Attention is directed to the provisions of Chapter 78, H.R.S., making certain discriminatory practices with respect to employment unlawful.

7.6 PERMITS, LICENSES AND TAXES—The Contractor shall procure all permits and licenses, pay all charges, fees, and taxes, and give all notices necessary and incidental to the due and lawful prosecution of the work.

7.7 PATENTED DEVICES, MATERIALS, AND PROCESSES—If the Contractor employs any design, device, material, or process covered by letters of patent or copyright, he shall provide for such use by suitable legal agreement with the patentee or owner. The Contractor and the surety shall indemnify and save harmless the State, any affected third party, or political subdivision from any and all claims for infringement by reason of the use of any such patented design, device, material or process, or any trademark or copyright, and shall indemnify the State for any costs, expenses, and damages which it may be obligated to pay by reason of any infringement, at any time during the prosecution or after the completion of the work.

7.8 CONFLICTS OF INTEREST—In all State or Federal-aid projects, no official or

employee of the State or any other governmental instrumentality who is authorized in his official capacity to negotiate, make, accept or approve, or to take part in negotiating, making, accepting or approving any contract or subcontract in connection with such project shall have, directly or indirectly, any financial or other personal interest in any such contract or subcontract. No engineer, attorney, appraiser, inspector or other person performing services for the State or any governmental instrumentality in connection with the project shall have, directly or indirectly, a financial or other personal interest, other than his employment or retention by the State or other governmental instrumentality in any contract or subcontract in connection with such project.

A violation of the provisions of this Section shall void the contract or agreement in respect of which such violation occurs, and no claim for loss or damage shall be made by the Contractor against the State or the Federal government.

7.9 FEDERAL AID PROVISIONS—When the United States Government pays all or any portion of the cost of a project, the Federal laws and the rules and regulations made pursuant to such laws must be observed by the Contractor, and the work shall be subject to the inspection of the appropriate Federal agency.

Such inspection shall in no sense make the Federal Government a party to this contract and will in no way interfere with the rights of either party hereunder.

7.10 SANITATION PROVISIONS—The Contractor shall provide and maintain sanitation (lavatory) facilities in a neat, sanitary condition such accommodations for the use of his employees and all others having legitimate reasons for being present as may be necessary to comply with the requirements of the Board of Health, or of other bodies or tribunals having jurisdiction.

7.11 PUBLIC CONVENIENCE AND SAFETY—The Contractor shall at all times conduct his work to assure the least possible obstruction to public traffic. The safety and convenience of the general public and of the residents along the project and the protection of persons and property shall be provided for by the Contractor.

7.12 BARRICADES AND WARNING SIGNS—The Contractor shall provide, erect, and maintain all necessary barricades, suitable and sufficient lights, danger signals, signs and other traffic control and safety devices, and shall take all necessary precautions for the protection of the work and safety of the public.

7.13 USE OF EXPLOSIVES OR COMBUSTIBLES—When the use of explosives or combustibles is necessary for the prosecution of the work, the Contractor shall exercise the utmost care not to endanger life and property. The Contractor shall be responsible for all damage resulting from the use of explosives or combustibles.

The storage and use of explosives or combustibles shall be in accordance with the provisions of Section 376-21 to 376-24, H.R.S., and Chapter 133, H.R.S.

The Contractor shall give written notification of his intention to use explosives to the Director. Such notice shall be given at least twenty-four hours in advance of the use of explosives or combustibles. The Director may order a delay in such use. The notice shall not relieve the Contractor of liability for any damage caused.

7.14 PROTECTION AND RESTORATION OF PROPERTY—The Contractor shall be responsible for the preservation of all public and private property.

The Contractor shall be responsible for all damage or injury to property of any character, during the prosecution of the work, resulting from any act, omission, neglect, or misconduct in his manner or method of executing the work, or due to defective work or materials.

When or where any direct or indirect damage or injury is done to public or private property by or on account of any act, omission, neglect, or misconduct of the Contractor, his employees or agents, the Contractor shall, at his own expense, restore, repair, or rebuild such property to a condition similar or equal to that existing before such damage or injury was done or make restitution in an acceptable manner.

7.15 RESPONSIBILITY FOR DAMAGE—The Contractor shall indemnify and save harmless the State, its officers and employees, from all suits, actions, or claims of any character brought because of any injuries to or damage sustained by any person, persons, or property on account of (1) the operations of the Contractor; (2) the negligence of the Contractor in safeguarding the work; (3) the use by the Contractor of unacceptable materials in constructing the work; (4) any act or omission, neglect, or misconduct of said Contractor; (5) any claims or amounts recovered for any infringements of patent, trademark, or copyright; and (6) any claims or amounts arising or recovered under the "Workmen's Compensation Act", or any other law, ordinance, order, or decree. The money due the Contractor under the contract as may be considered necessary by the State for such purpose may be retained for the use of the State. If no money is due, the Contractor's surety may be held until all suits, actions and claims for injuries or damages shall have been settled and suitable evidence to that effect furnished to the State. Money due the Contractor will not be withheld under this section if the Contractor submits satisfactory evidence that he is adequately protected by public liability and property damage insurance.

It is not the intention of the parties to this contract to make the public or any member thereof a third party beneficiary hereunder, or to authorize anyone not a party hereto to maintain a suit for personal injuries or property damage based on a contract theory of liability. In any event, the Contractor shall hold and save the State harmless from suits and claims for personal injuries or property damage where such injuries or damage are caused by the negligent acts or omissions of the Contractor, its agents or employees.

7.16 CONTRACTOR'S RESPONSIBILITY FOR WORK—Until final written acceptance of the project by the Director, the Contractor shall have the charge and care thereof and shall take every precaution against injury or damage to any part thereof by the action of the elements or from any other cause. The Contractor shall rebuild, repair, restore, and make good all damage to the work or any portion thereof occasioned by any cause before final acceptance and shall bear the expense thereof except damage to the work due to unforeseeable causes beyond the control of and without the fault or negligence of the Contractor such as acts of God, of the public enemy or governmental authorities.

When work is suspended for any cause whatever, the Contractor shall be responsible for the project and shall take such precautions as may be necessary to prevent damage to the project, provide for normal drainage and shall erect any necessary temporary structures, signs, or other facilities at his expense. During the period of suspension of work, the Contractor shall properly and continuously maintain all living material in newly established plantings, seedings, and soddings furnished under the contract.

7.17 CONTRACTOR'S RESPONSIBILITY FOR UTILITY PROPERTY AND SERVICES—Where the Contractor's operations are in close proximity to other property and damage to such may be considerable or inconvenient to the public, work shall not be commenced until arrangements necessary for the protection of such property have been made.

The Contractor shall cooperate with utility companies in the removal and relocation operations in order that these operations may progress in a reasonable manner keeping duplication of work to a minimum, and preventing unnecessary interruption in utility services.

In the event of an interruption in utility services by reason of a breakage or in the event a utility facility becomes exposed or unsupported, the Contractor shall promptly notify the proper authority and shall cooperate with the said authority in remedying the situation. If water service is interrupted, repair work shall be continuous until the service is restored. No work shall be undertaken around fire hydrants until provisions for continuous service have been approved by the local agency having jurisdiction over such facility.

During construction operations, the Contractor shall use special care to prevent damage to all pipes, cables and other underground utility facilities. Any damage done thereto, regardless of location or whether or not the underground facilities are shown on the plans, shall be repaired by the contractor at the Contractor's expense, or if required by the agencies having jurisdiction of such utilities, the Contractor shall arrange for the appropriate utility company to repair the damage at the Contractor's expense.

7.18 NON-LIABILITY OF PUBLIC OFFICIALS—In carrying out any of the provisions of these specifications, or in exercising any power or authority granted to them by or within the scope of the contract, there shall be no liability upon the Director and his authorized representatives, either personally or as officials of the State, it being understood that in all such matters they act solely as agents and representatives of the State.

7.19 NON-WAIVER OF LEGAL RIGHTS—Upon completion of the work, the State will expeditiously make final inspection and, if accepted, will notify the Contractor of acceptance. Such final acceptance, however, shall not preclude or estop the State from correcting any measurement, estimate, or certificate made before or after completion of the work, nor shall the State be precluded or estopped from recovering from the Contractor or his surety, or both, any overpayment it may have made, or for failure on the part of the Contractor to fulfill his obligations under the contract.

The Contractor shall be liable for latent defects.

ARTICLE VIII—PROSECUTION AND PROGRESS

8.1 SUBCONTRACTING—The Contractor shall not subcontract, sell, transfer, assign, or otherwise dispose of the contract or any portion thereof, or his right, title or interest in the contract without written consent of the Director.

Subject to the provisions of Section 103-29, H.R.S., the Contractor may subcontract a portion of the work but he remains primarily responsible for the work so subcontracted. The Contractor shall not be permitted to subcontract work to any subcontractor who has been suspended by the State.

The Contractor shall perform with his own organization, work amounting to not less than 50 per cent of the total contract cost, except that any items designated in the contract as "specialty items" may be performed by subcontract and the cost of any such specialty items so performed by subcontract may be deducted from the total contract cost before computing the amount of work required to be performed by the Contractor with his own organization. Where an entire item is subcontracted, the value of work subcontracted will be based on the contract item bid price. When a portion of an item is subcontracted, the value of work subcontracted will be estimated by the Director and be based on the cost of such portion of the contract item.

Before any work is started under a subcontract, the Contractor shall file with and receive the approval of the Director on the form entitled "Request for Approval of Subcontractors."